

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**ANDRE DAVIS,**

**Petitioner,**

**Case No. 05-71606**

**v.**

**HONORABLE DENISE PAGE HOOD**

**H.J. MARBERRY,**

**Respondent .**

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**ORDER ACCEPTING REPORT AND RECOMMENDATION**

This matter is before the Court on Magistrate Judge R. Steven Whalen's Report and Recommendation dated January 13, 2006. A copy of the Report and Recommendation that was mailed to the Petitioner, was returned as undeliverable on January 31, 2006. The Report and Recommendation was sent to Petitioner's current address on January 31, 2006. As of this date, neither party has filed objections.

Magistrate Judge Whalen concluded that Petitioner did not exhaust all administrative remedies before filing the section 1983 action, as required by the Prison Litigation Reform Act (PLRA), and as such Petitioner had no likelihood of success as required for injunctive relief. The Magistrate Judge recommended that this Court deny Petitioner's Motion to Order Warden to Authorize Surgery.

The Court has had an opportunity to review this matter and finds that the Magistrate Judge reached the correct conclusion for the proper reasons.

Accordingly,

IT IS ORDERED that the Report and Recommendation of Magistrate Judge R. Steven

Whalen dated January 13, 2006 is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Petitioner's Motion To Order Warden to Authorize Surgery [**Docket No. 3, filed April 25, 2005**] is DENIED.

IT IS FURTHER ORDERED that this matter is DISMISSED without prejudice.

/s/ Denise Page Hood  
DENISE PAGE HOOD  
United States District Judge

DATED: March 8, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on March 8, 2006, by electronic and/or ordinary mail.

s/William F. Lewis  
Case Manager